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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 NEXRF CORP.,

Case No. 3:20-cv-00603-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 PLAYTIKA LTD., *et al.*,

10 Defendants.

11 **I. SUMMARY**

12 Plaintiff NEXREF Corp. sued Defendants Playtika Ltd., Playtika Holding Corp.  
13 (collectively, “Playtika”) and Caesars Interactive Entertainment (“Caesars”) for allegedly  
14 infringing five patents<sup>1</sup> by offering online slot machine games. (ECF No. 1.) Before the  
15 Court are Caesars and Playtika’s motions to dismiss (ECF Nos. 26, 28),<sup>2</sup> and Playtika’s  
16 motion for sanctions under Federal Rule of Civil Procedure 11 (ECF No. 53).<sup>3, 4</sup> As further  
17 explained below, because the Court agrees with Defendants in pertinent part that all five  
18 of Plaintiff’s asserted patents are invalid under *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573  
19 U.S. 208 (2014), and its progeny, the Court will grant both motions to dismiss. The Court  
20 will also deny Playtika’s motion for sanctions primarily because it is based on arguments  
21 that the Court does not rule on in this order.

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24 \_\_\_\_\_  
25 <sup>1</sup>The five patents are U.S. Patent Nos. 8,747,229 (the ’229 patent), 8,506,406 (the  
26 ’406 patent), 9,646,454 (the ’454 patent), 8,506,407 (the ’407 patent), and 9,373,116 (the  
27 ’116 patent) (collectively, the “asserted patents”). (ECF No. 1 at 1.)

28 <sup>2</sup>Plaintiff filed a combined response (ECF No. 47), and Defendants filed replies  
(ECF Nos. 51, 52).

<sup>3</sup>Plaintiff filed a response (ECF No. 56), and Playtika filed a reply (ECF No. 57).

<sup>4</sup>The Court denies the parties’ requests for oral argument. See LR 78-1.

## II. BACKGROUND

The following allegations are adapted from the Complaint. (ECF No. 1.) Plaintiff alleges that the asserted patents “disclose various systems and methods for embodiments of a fully remote, multiplayer capable, secure, and engaging casino-style gaming system.” (*Id.* at 2.) Said otherwise, the asserted patents generally claim slot machine games playable on a computer or handheld device run on a remote server. Plaintiff more specifically alleges that all asserted patents cover certain unconventional elements:

1. A centralized game server that sends game outcomes and corresponding images to a remote device;
2. A verification server coupled to the centralized game server that controls access to gaming activities;
3. A relatively fast image and/or video delivery component.

(*Id.* at 2.)

Plaintiff further alleges that particular asserted patents contain additional unconventional elements. (*Id.* at 2-3.) The '229 patent covers a payable module associated with the centralized game server. (*Id.*) The '407 patent covers a transactional system that credits funds from winning game outcomes to a user's financial account. (*Id.* at 3.) And the '116 patent covers location tracking of a user, along with providing that user with rewards. (*Id.*)

Caesars owned Playtika for some time but does not anymore. (*Id.* at 4-5.) Both Defendants offer various mobile slot machine games, some that allow users to wager real money, and some that do not. (*Id.* at 5-7.) Plaintiff accuses these games of infringement.<sup>5</sup> (*Id.* at 5-23.)

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<sup>5</sup>Plaintiff's Complaint is unclear as to who makes what game, and precisely which games Plaintiff is accusing of infringing which patents. Indeed, Defendants argue Plaintiff's Complaint is fatally unclear. (ECF Nos. 26 at 24-25, 28 at 10-16.) However, the Court does not wade into these issues because it finds the asserted patents invalid under *Alice* and its progeny.

1 Plaintiff's Complaint includes five counts, one for each of the asserted patents. (*Id.*)  
2 In each count, Plaintiff alleges that Defendants infringe "the asserted claims of" each of  
3 the asserted patents, and otherwise states that Defendants infringe "one or more claims  
4 of" each patent, "including but not limited to claim 1[.]" (See, e.g., *id.* at 7.) But Plaintiff  
5 characterizes claim 1 of each asserted patent as exemplary, and only ever specifically  
6 includes the limitations of claim 1 of each asserted patent in its Complaint. (*Id.* at 7-8, 10,  
7 14, 17, 20.)

8 Following the order that Plaintiff uses in the Complaint, and to provide necessary  
9 context for the Court's discussion *infra*, claim 1 of each of the asserted patents follows  
10 below.

11 **A. The '229 patent**

12 A gaming server system configured to communicate with at least one  
13 network access device communicatively coupled to a network, the gaming  
server system comprising:

14 a verification system configured to access a registration database  
having a plurality of registration data associated with each registered  
user;

15 a memory module configured to store a plurality of images  
corresponding to at least one game outcome that are communicated  
16 to the at least one network access device;

17 a centralized gaming server communicatively coupled to each of the  
at least one network access device, the centralized gaming server  
configured to generate at least one random game outcome by  
18 random generation at the centralized gaming server;

19 a payable module associated with the centralized gaming server,  
the payable module configured to determine one or more prizes  
associated with a game outcome; and

20 the centralized gaming server configured to access the memory  
module and communicate the plurality of images corresponding to  
21 the at least one random game outcome to the at least one network  
access device.

22 (*Id.* at 7-8.)

23 **B. The '406 Patent**

24 A system to run a gaming application on a network access device,  
comprising:

25 the network access device; and

26 a remote gaming system including a verification system;

the network access device configured to transmit user identification  
information and security information to the verification system;

27 the network access device configured to receive an  
acknowledgement from the verification system indicating that the  
28 user identification information and security information are valid;

1 the network access device configured to receive a game input from  
2 a user of the network access device and transmit the game input to  
3 the remote gaming system;  
4 the remote gaming system configured to receive the game input and  
5 generate a random game output, the remote gaming system further  
6 configured to associate an image ID with the random game output  
7 and select one or more images associated with the image ID for  
8 encoding and broadcasting to the network access device;  
9 the network access device configured to receive a plurality of  
10 broadcast images generated by the remote gaming system.

(*Id.* at 10.)

### 7 **C. The '454 Patent**

8 A networked gaming system comprising:

9 a user identification received by at least one network access device  
10 that is compared with registration data in a registration database,  
11 wherein a player is provided access to a game when the user  
12 identification matches the registered player data;  
13 a transactional component that charges the registered player at least  
14 one credit for a game outcome;  
15 a centralized networked gaming module that performs game  
16 operations and generates at least one random game output by  
17 random generation at the networked gaming module;  
18 the networked gaming module associates the at least one random  
19 game output with an image ID; and  
20 the networked gaming module communicates one or more images  
21 corresponding to the image ID to the network access device.

(*Id.* at 14.)

### 16 **D. The '407 Patent**

17 A gaming system network, comprising:

18 a verification system configured to verify that a user attempting to  
19 access the gaming system network is a registered player, the user  
20 operating a network access device communicating with the gaming  
21 system network;  
22 a gaming system configured to generate at least one random game  
23 output, the gaming system configured to associate an image ID with  
24 the at least one random game output;  
25 a video server configured to store a plurality of images corresponding  
26 to at least one game, the video server configured to retrieve one or  
27 more images associated with the image ID, wherein the one or more  
28 images are representative of a game output, the video server  
configured to communicate the one or more images to the network  
access device; and  
a transactional system configured to credit monetary funds to a  
financial account of the user based on the at least one random game  
output.

(*Id.* at 17.)

### 27 **E. The '116 Patent**

28 An interactive gaming system for a casino property, the interactive gaming  
system comprising:

1 a wireless device associated with a registered user, wherein the  
2 wireless device is used to determine a location of the registered user  
3 and the wireless device communicates with a network using at least  
4 one wireless networking protocol;  
5 a verification system that accesses a registration database having  
6 registration data associated with each registered user;  
7 a centralized gaming server communicatively coupled to the wireless  
8 device, the centralized gaming server generates at least one random  
9 game outcome;  
10 a memory module that stores a plurality of images corresponding to  
11 the at least one game outcome that are communicated to the  
12 wireless device;  
13 the centralized gaming server accesses the memory module and  
14 communicates the plurality of images corresponding to the random  
15 game outcome to the wireless device; and a casino player tracking  
16 system that includes,  
17 a registered user profile that further includes a plurality of user  
18 preferences,  
19 a record of a plurality of accumulated points associated with a  
20 betting activity of the registered user, wherein the betting  
21 activity is associated with the random outcomes generated by  
22 the centralized gaming server,  
23 at least one complimentary good or service corresponding to  
24 the accumulated points associated with the registered user;  
25 and  
26 a plurality of messages generated by the casino player  
27 tracking system for the wireless device regarding the  
28 complementary goods or services.

(*Id.* at 20.)

### III. MOTIONS TO DISMISS

The Court begins by reciting the legal standards governing its review of these motions. It then analyzes Claim 1 of the '229 patent under the *Alice* framework as representative of the asserted claims of the '454 and '406 patents as well.<sup>6</sup> The Court then analyzes Claim 1 of the '407 patent under the *Alice* framework, followed by Claim 1 of the '116 patent.<sup>7</sup> Finally, the Court explains that it will not grant Plaintiff leave to amend, as amendment would be futile. Again, and as noted, because the Court finds Defendants'

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<sup>6</sup>Plaintiff stated that it did "not oppose treating the '229 Patent as representative of the '454 and '406 Patents for the purposes of this § 101 analysis." (ECF No. 47 at 16 n.10.) Plaintiff also identifies claim 1 of the '229 patent as exemplary, so the Court's analysis of claim 1 applies to all other claims of the '229 patent as well. (ECF No. 1 at 7.)

<sup>7</sup>As noted, Plaintiff itself holds these two claims out as exemplary of the asserted claims of these two patents, so the Court's findings as to these two claims apply to both patents more broadly. (ECF No. 1 at 17, 20.)

1 *Alice* arguments persuasive, it does not address any of the other arguments Defendants  
2 raised in their motions to dismiss.

3 **A. Legal Standards**

4 **1. Motions to Dismiss**

5 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
6 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide  
7 "a short and plain statement of the claim showing that the pleader is entitled to relief."  
8 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While  
9 Rule 8 does not require detailed factual allegations, it demands more than "labels and  
10 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*  
11 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "Factual allegations  
12 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to  
13 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a  
14 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550  
15 U.S. at 570).

16 In *Iqbal*, the Supreme Court clarified the two-step approach district courts must  
17 apply when considering motions to dismiss. First, a district court must accept as true all  
18 well-pleaded factual allegations in the complaint; however, legal conclusions are not  
19 entitled to the assumption of truth. See *id.* at 678. Mere recitals of the elements of a cause  
20 of action, supported only by conclusory statements, do not suffice. See *id.* Second, a  
21 district court must consider whether the factual allegations in the complaint allege a  
22 plausible claim for relief. See *id.* at 679. A claim is facially plausible when the plaintiff's  
23 complaint alleges facts that allow a court to draw a reasonable inference that the  
24 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does  
25 not permit the Court to infer more than the mere possibility of misconduct, the complaint  
26 has "alleged—but it has not show[n]—that the pleader is entitled to relief." *Id.* at 679  
27 (alteration in original) (internal quotation marks and citation omitted). That is insufficient.  
28

1 When the claims in a complaint have not crossed the line from conceivable to plausible,  
2 the complaint must be dismissed. See *Twombly*, 550 U.S. at 570.

## 3                   **2.     *Alice***

4           Under Section 101 of the Patent Act, an inventor may obtain a patent on “any new  
5 and useful process, machine, manufacture, or composition of matter, or any new and  
6 useful improvement thereof.” 35 U.S.C. § 101. Courts, however, “have long held that this  
7 provision contains an important implicit exception: Laws of nature, natural phenomena,  
8 and abstract ideas are not patentable.” *Alice*, 573 U.S. at 216 (quoting *Ass’n for Molecular*  
9 *Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The concern behind these  
10 excepted categories is “one of pre-emption”—if an inventor could obtain patent protection  
11 over these “building blocks of human ingenuity,” then the patent scheme would work to  
12 undermine, not promote, future innovation. *Id.* But courts are careful to balance concerns  
13 over preemption with the fact that “all inventions at some level embody, use, reflect, rest  
14 upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo Collaborative*  
15 *Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012). Thus, where an invention  
16 moves beyond an abstract idea by applying it “to a new and useful end,” the invention will  
17 meet the Section 101 standard. *Alice*, 573 U.S. at 217 (quoting *Gottschalk v. Benson*,  
18 409 U.S. 63, 67 (1972)).

19           Considering these competing concerns, the Supreme Court has developed a two-  
20 part test to assess whether a patent covers an abstract idea. First, courts must determine  
21 whether a patent’s claims are directed to a “patent-ineligible concept[.]” such as an  
22 abstract idea. *Id.* Abstract ideas may be “preexisting, fundamental truth[s]” such as  
23 mathematical equations, and also encompass “method[s] of organizing human activity”  
24 or “longstanding commercial practice[s]” like intermediated settlement or risk hedging. *Id.*  
25 at 220.

26           Second, if a court “determine[s] that the patent is drawn to an abstract idea or  
27 otherwise ineligible subject matter,” then that court examines “whether the remaining  
28 elements, either in isolation or combination with the non-patent-ineligible elements, are

1 sufficient to ‘transform the nature of the claim into a patent-eligible application.’”  
2 *Intellectual Ventures I LLC v. Capital One Bank (USA)* (“*Capital One*”), 792 F.3d 1363,  
3 1366-67 (Fed. Cir. 2015) (quoting *Alice*, 573 U.S. at 223).

4 Whether a patent is eligible under § 101 is a question of law that may be  
5 determined at the dismissal stage. See *Accenture Glob. Servs., GmbH v. Guidewire*  
6 *Software, Inc.*, 728 F.3d 1336, 1340-41 (Fed. Cir. 2013) (reviewing a § 101 determination  
7 *de novo* but noting that the legal issue on review “may contain underlying factual issues”);  
8 see also *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348-49 (Fed. Cir.  
9 2015) (affirming a district court’s granting of a motion to dismiss on § 101 grounds).

## 10 **B. Discussion**

11 To start, Plaintiff argues that Defendants’ motions to dismiss are premature and  
12 therefore noncompliant with LPR 1-4(c)<sup>8</sup> because there are threshold factual issues the  
13 Court must resolve before determining invalidity and “there will be significant claim  
14 construction disputes” in this case. (ECF No. 47 at 15.) However, and as Defendants  
15 argue (ECF Nos. 51 at 13-14, 52 at 8), Plaintiff does not specify what those factual issues  
16 and claim construction disputes are (see *generally* ECF No. 47). Moreover, having  
17 reviewed the asserted patents, the parties’ briefing, and the applicable law, the Court  
18 cannot say what those factual issues and claim construction disputes—rendering an *Alice*  
19 analysis of the asserted patents premature—would be. The Court will address the merits  
20 of the parties’ *Alice* arguments now. See *Simio, LLC v. FlexSim Software Prod., Inc.*, 983  
21 F.3d 1353, 1365 (Fed. Cir. 2020) (concluding that neither conclusory statements nor  
22 unexplained, potential claim construction disputes prevent a district court from addressing  
23 patent eligibility at the pleadings stage).

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26 <sup>8</sup>LPR 1-4(c) provides, “A party moving to dismiss one or more claims as patent-  
27 ineligible under § 101 must demonstrate in its motion, if appropriate, that there is no  
28 factual issue, claim construction or otherwise, that the court need determine before  
deciding dismissal under 35 U.S.C. § 101. The filing of a § 101 motion before a Claim  
Construction Order must not delay any date in the Discovery Plan and Scheduling Order,  
unless otherwise ordered by the court.”

1                   **1.     '229 Patent<sup>9</sup>**

2           The Court addresses below both steps of the *Alice* analysis as to Claim 1 of the  
3   '229 patent because it is drawn to patent-ineligible subject matter.

4                   **a.     *Alice* Step One**

5           Claim 1 of the '229 patent is directed to the abstract idea of remotely playing a slot  
6   machine on a server. (ECF No. 1-1 at 19.) As Playtika argues, Claim 1 of the '229 patent  
7   is analogous to the claims found abstract in *Planet Bingo, LLC v. VKGS LLC*, 576 F. App'x  
8   1005, 1007-08 (Fed. Cir. 2014) and *In re Smith*, 815 F.3d 816, 818-19 (Fed. Cir. 2016).  
9   (ECF No. 28 at 20.) And Plaintiff's decision not to address *Planet Bingo* in response to  
10   Playtika's motion to dismiss indeed suggests that Plaintiff has no convincing response.  
11   (ECF No. 47.) In *Planet Bingo*, the Federal Circuit Court of Appeals affirmed the district  
12   court's finding that patent claims directed to "managing a bingo game while allowing a  
13   player to repeatedly play the same sets of numbers in multiple sessions" were directed to  
14   an abstract idea. 576 F. App'x at 1007-08. There, the Federal Circuit described as  
15   exemplary a claim that recited "the steps of selecting, storing, and retrieving two sets of  
16   numbers, assigning a player identifier and a control number, and then comparing a  
17   winning set of bingo numbers with a selected set of bingo numbers." *Id.* But this claim  
18   was directed to an abstract idea because "not only can these steps be 'carried out in  
19   existing computers long in use,' but they also can be 'done mentally.'" *Id.* at 1008.

20           The system described in Claim 1 of the '229 patent is similar because it describes  
21   a slot machine that runs on a server. (ECF No. 1-1 at 19.) The components of this claim  
22   are all processes that could be carried out in existing computers, as evidenced by the fact  
23   that the '229 patent's specification does not describe any of the computerized  
24   components of the purported invention as novel or representing improvements on the  
25   prior art. (See generally *id.*; see also ECF No. 47 at 18-19 (effectively conceding that all  
26   component parts of the claim were routine).) And like the "rules for conducting a wagering  
27

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28           <sup>9</sup>As noted *supra*, the Court's analysis in this section applies with equal force to the  
  '454 and '406 patents.

1 game” found abstract in *In re Smith*, 815 F.3d at 818, a slot machine described at the high  
2 level at which it is described in this claim is a “fundamental economic practice” like those  
3 previously found abstract in binding caselaw. *Id.* (citations omitted). And even while the  
4 system described in Claim 1 of the ’229 patent runs on a server, that does not make it  
5 any less abstract. See *Capital One*, 792 F.3d at 1367 (“And while the claims recite  
6 budgeting using a ‘communication medium’ (broadly including the Internet and telephone  
7 networks), that limitation does not render the claims any less abstract.”). This is contrary  
8 to Plaintiff’s primary argument where Plaintiff characterizes the centralized game server  
9 as one of the key inventive elements of all asserted patents. (ECF No. 47 at 17-19.)

10 Plaintiff’s reliance on *In re Smith* is also misplaced. (ECF No. 47 at 21.) Plaintiff  
11 specifically relies on *In re Smith* to argue that not all patents directed to the gaming arts  
12 are categorically invalid. (*Id.*) While that is a fair characterization of one of the Federal  
13 Circuit’s statements in *In re Smith*, it does not render Claim 1 of the ’229 patent non-  
14 abstract. To the contrary, Claim 1 of the ’229 patent has more in common with the patent  
15 claims held invalid in *In re Smith* than it does with the hypothetical gaming patent  
16 described in *In re Smith* that may be patent eligible. See 815 F.3d at 818-19 (affirming  
17 the Board’s finding that a “wagering game is, effectively, a method of exchanging and  
18 resolving financial obligations based on probabilities created during the distribution of the  
19 cards.”). Like the claims at issue in *In re Smith*, which covered the rules of a card game,  
20 Claim 1 of the ’229 patent covers a slot machine that can be played remotely. And that  
21 slot machine is effectively a method of exchanging and resolving financial obligations  
22 based on probabilities created by a generic random number generator. (ECF No. 1-1 at  
23 19.) See also *In re Smith*, 815 F.3d at 818-19.

24 Further, Plaintiff’s argument that “the patents-in-suit are directed to technical  
25 improvements in online gaming systems” is unpersuasive because Claim 1 of the ’229  
26 patent does not explain how any of the purported technical improvements work.<sup>10</sup> (ECF

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27 <sup>10</sup>To the extent that Plaintiff is arguing Claim 1 of the ’229 patent is directed to  
28 improvements in computer functionality, the Court rejects that argument because nothing

1 No. 47 at 17.) Claim 1 includes a verification system that has registration data associated  
2 with registered users, but how does it make that association? (ECF No. 1-1 at 19.) Claim  
3 1 also includes a centralized gaming server that randomly generates a game outcome,  
4 but how does the centralized gaming server do that? (*Id.*) As another example, Claim 1  
5 includes a payable module that determines the prizes associated with an outcome, but  
6 also does not explain how the payable module does that.<sup>11</sup> (*Id.*) See, e.g., *Bot M8 LLC*  
7 *v. Sony Corp. of Am.*, 465 F. Supp. 3d 1013, 1021 (N.D. Cal. 2020) (currently on appeal)  
8 (“That’s a result, not a means to achieve it. So, up front it’s abstract.”). In general,  
9 Plaintiff’s argument that Claim 1 of the ’229 patent is directed to technical improvements  
10 in online gaming systems would be more persuasive if the claim itself explained how to  
11 accomplish any of the purported technical improvements it covers. See *Elec. Power Grp.,*  
12 *LLC v. Alstom S.A.*, 830 F.3d 1350, 1356 (Fed. Cir. 2016) (“Indeed, the essentially result-  
13 focused, functional character of claim language has been a frequent feature of claims  
14 held ineligible under § 101, especially in the area of using generic computer and network  
15 technology to carry out economic transactions.”).

16 Even more generally, Plaintiff’s arguments sound in novelty or nonobviousness  
17 instead of effectively countering Playtika’s argument that Claim 1 of the ’229 patent is  
18 directed to an abstract idea. “But, a claim for a *new* abstract idea is still an abstract idea.”  
19 *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016)  
20 (emphasis in original). And Plaintiff’s argument that Defendants’ noninfringement  
21 arguments contradict their arguments that the asserted patents are unpatentably abstract  
22 does not follow either. As Defendants reply, there is nothing contradictory about them

23 \_\_\_\_\_  
24 in the claims or specification of the patent claims or discusses any sort of improvements  
25 in the computer components that make up the system. (ECF No. 1-1.) See *RecogniCorp,*  
26 *LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Unlike *Enfish*, claim 1 does  
not claim a software method that improves the functioning of a computer. It claims a  
‘process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a  
tool.”) (citations omitted).

27 <sup>11</sup>The specification does provide an illustrative example of the rules governing the  
28 payable’s programming, but the payable as described in Claim 1 of the ’229 patent is  
written more broadly and left undefined because the example rules provided in the  
specification are merely illustrative. (*Compare* ECF No. 1-1 at 18-19 *with id.* at 19.)

1 arguing they do not infringe an abstract idea as Plaintiff has characterized it. (ECF Nos.  
2 51 at 11, 52 at 6.)

3 In sum, Claim 1 of the '229 patent is directed to the abstract idea of remotely  
4 playing a slot machine on a server, and none of Plaintiff's arguments to the contrary are  
5 persuasive.

6 **b. Alice Step Two**

7 Moreover, Claim 1 of the '229 patent lacks an inventive concept sufficient to  
8 transform the abstract idea described therein into a patent-eligible application. The '229  
9 patent instead generally consists of a combination of generic computer elements  
10 performing conventional functions. For example, the '229 patent describes networked  
11 interactive gaming over the internet as well known in the art, including secure methods  
12 for doing so. (ECF No. 1-1 at 12.) The specification also describes random number  
13 generators and paytables as known in the art. (*Id.*) The same goes for displays and  
14 encryption systems. (*Id.* at 12, 16.) But “[i]nstructing one to ‘apply’ an abstract idea and  
15 reciting no more than generic computer elements performing generic computer tasks  
16 does not make an abstract idea patent-eligible.” *Capital One*, 792 F.3d at 1368; *see also*  
17 *Brit. Telecommunications PLC v. IAC/InterActiveCorp*, 813 F. App'x 584, 587 (Fed. Cir.  
18 2020) (reciting generic computer hardware performing conventional steps does not  
19 constitute an inventive concept).

20 Moreover, the features described in Claim 1 of the '229 patent are described and  
21 claimed generically. (ECF No. 1-1 at 19 (describing the verification system, memory  
22 module, centralized gaming server, and payable module based on what they can do  
23 instead of how they do it).) Claim 1 of the '229 patent thus lacks an inventive concept  
24 sufficient to transform the abstract idea of remotely playing a slot machine on a server  
25 into a patent-eligible application. *See Affinity Labs of Texas, LLC v. Amazon.com Inc.*,  
26 838 F.3d 1266, 1271 (Fed. Cir. 2016) (“The features set forth in the claims are described  
27 and claimed generically rather than with the specificity necessary to show how those  
28 components provide a concrete solution to the problem addressed by the patent.”).

1           Plaintiff's arguments to the contrary are unpersuasive. Plaintiff first argues that  
2   "[w]hat was 'well-understood, routine, and conventional' at the priority date of the patents  
3   is a question of fact" not suitable for resolution at this stage of the litigation. (ECF No. 47  
4   at 23.) But that is not the case, where, as here, the specification of the asserted patent  
5   describes its own components as conventional. See *Aatrix Software, Inc. v. Green*  
6   *Shades Software, Inc.*, 890 F.3d 1354, 1356 (Fed. Cir. 2018) ("In a situation where the  
7   specification admits the additional claim elements are well-understood, routine, and  
8   conventional, it will be difficult, if not impossible, for a patentee to show a genuine  
9   dispute.") (citation omitted). Plaintiff next points to certain allegations in its Complaint  
10   "regarding the technical improvements claimed by the patents-in-suit[.]" (ECF No. 47 at  
11   23 (citing ECF No. 1 at 2-3).) But the Court instead agrees with Playtika that these alleged  
12   advantages "are at most all incidental advantages of using a generic server for its  
13   intended purpose and cannot therefore be considered inventive." (ECF No. 51 at 12.) See  
14   also *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290-91 (Fed. Cir. 2018) ("If a  
15   claim's only 'inventive concept' is the application of an abstract idea using conventional  
16   and well-understood techniques, the claim has not been transformed into a patent-eligible  
17   application of an abstract idea.").

18           Plaintiff finally argues that the patents in suit are at least as inventive as those  
19   upheld in *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349  
20   (Fed. Cir. 2016). (ECF No. 47 at 23-24.) In *Bascom*, the Federal Circuit found the claim  
21   at issue patent-eligible at *Alice* step two because it claimed and described the inventive  
22   concept of "the installation of a filtering tool at a specific location, remote from the end-  
23   users, with customizable filtering features specific to each end user." 827 F.3d at 1350.  
24   But Plaintiff does not persuasively explain how this finding applies to Claim 1 of the '229  
25   patent, merely arguing that "the arrangement of all the components including the  
26   centralization of the game outcome and transmission of images related to that game  
27   outcome is unconventional." (ECF No. 47 at 24.) And again, the centralization of game  
28   outcome and image transmission that Plaintiff describes as the inventive concept of this

1 claim is merely an incidental benefit of the claimed generic server. (ECF No. 51 at 12.)  
2 See also *BSG Tech*, 899 F.3d 1281 at 1290-91. The Court accordingly concludes that  
3 Claim 1 of the '229 patent lacks an inventive concept that could render it patent-eligible.

4 In sum, based on its analysis of representative Claim 1 of the '229 patent, the Court  
5 concludes that the '229, '454, and '406 patents are all invalid under *Alice* and its progeny.

## 6 **2. '407 Patent**

7 The same goes for the '407 patent. Plaintiff argues this patent differs from the '229  
8 patent in that it “includes an additional feature in a centralized transaction system that  
9 credits funds to a financial account of the user based on the game outcome.” (ECF No.  
10 47 at 20 (citing ECF No. 1-4 at 19).) Plaintiff further explains that storing a user’s financial  
11 account information on a centralized server offered improved security over prior art  
12 systems that stored account information either on a slot machine or otherwise locally. (*Id.*)  
13 Caesars counters that this improvement is merely a benefit of practicing the abstract idea  
14 recited in the patent, not a technological improvement to technology—or said otherwise,  
15 that nothing in the patent allows a computer to do something it could not do before. (ECF  
16 No. 52 at 3-4.) The Court agrees with Caesars.

### 17 **a. *Alice* Step One**

18 To start, the Court incorporates by reference its discussion *supra* regarding the  
19 '229 patent because much of it applies to the '407 patent as well. As articulated by  
20 Plaintiff, the difference is that the '407 patent includes “a transactional system configured  
21 to credit monetary funds to a financial account of the user based on the at least one  
22 random game output.” (ECF No. 1-4 at 19; see also ECF No. 47 at 20.) But the Court  
23 agrees with Caesars that this is “merely claiming an abstract idea as a result without  
24 claiming a specific mechanism to achieve that result[.]” (ECF No. 52 at 4.) Indeed, even  
25 in the specification of the '407 patent, the transactional system is described based on  
26 what it can do, and not how it performs any of the functions it purportedly includes. (ECF  
27 No. 1-4 at 14 (“Preferably, the transactional system is capable of receiving a plurality of  
28 funds from a financial account and converting them to credits that are used in the

1 broadband gaming system.”), 15 (“The transactional system 38 performs a plurality of  
2 functions including tracking each transaction performed by both the verification system  
3 and the broadband gaming system and conducting electronic fund transfers.”), 17 (“The  
4 transactional system 38 performs a plurality of functions including tracking each  
5 transaction performed by both the verification system and the broadband gaming  
6 system.”).) This is the sort of result-focused, functional claim language frequently held  
7 patent-ineligible under *Alice* and its progeny. See *Elec. Power Grp.*, 830 F.3d at 1356.  
8 Indeed, the transactional system described in Claim 1 of the ’407 patent is an example of  
9 “using generic computer and network technology to carry out economic transactions.” *Id.*  
10 It is drawn to patent-ineligible concept under *Alice* step one.

### 11 **b. Alice Step Two**

12 And Claim 1 of the ’407 patent lacks an inventive concept that could save the ’407  
13 patent at *Alice* step two. Claim 1 of the ’407 patent as to the transactional system that  
14 Plaintiff points to “merely describe[s] the functions of the abstract idea itself, without  
15 particularity. This is simply not enough under step two.” *Intell. Ventures I LLC v. Cap. One*  
16 *Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017). (See also ECF No. 1-4 at 14, 15, 17,  
17 19 (“a transactional system configured to credit monetary funds to a financial account of  
18 the user based on the at least one random game output.”).) The transactional system  
19 “neither improve[s] the functions of the computer itself, nor provide[s] specific  
20 programming, tailored software, or meaningful guidance for implementing the abstract  
21 concept.” *Intell. Ventures*, 850 F.3d at 1342. The ’407 patent is accordingly invalid under  
22 *Alice* and its progeny.

## 23 **3. ’116 patent**

### 24 **a. Alice Step One**

25 Claim 1 of the ’116 patent is likewise directed to an abstract idea: incentivizing  
26 gambling tailored to a user’s location. Caesars argues that the ’116 patent is drawn to the  
27 abstract idea of incentivized computer gambling. (ECF No. 26 at 6.) Plaintiff counters that  
28 the ’116 patent is not directed to an abstract idea because of its “features of tracking the

1 location and gameplay of the user and offering rewards or gameplay options to the user  
2 based upon that tracked information[,]” which are an improvement upon prior art tracking  
3 systems. (ECF No. 47 at 20-21.) The Court generally agrees with Caesars, though it finds  
4 the ’116 patent is drawn to the abstract idea of incentivized gambling tailored to a user’s  
5 specific location, not merely incentivized gambling.

6 As discussed as to the ’229 patent, the Federal Circuit has previously held that a  
7 gambling game managed on a computer was abstract because it “consists solely of  
8 mental steps which can be carried out by a human using pen and paper.” *Planet Bingo*,  
9 576 Fed. App’x at 1007 (citing *Planet Bingo, LLC v. VKGS LLC*, 961 F. Supp. 2d 840,  
10 851 (W.D. Mich. 2013)). Similarly, here, the ’116 patent is directed to a computerized  
11 version of a common casino slot machine game like those played in person. But the ’116  
12 patent is also drawn to the abstract idea of tailoring information based on location.  
13 However, the Federal Circuit has also held that location “targeted marketing is a form of  
14 ‘tailoring information based on [provided] data,’” and is an abstract idea. *Bridge and Post*,  
15 *Inc. v. Verizon Communications, Inc.*, 778 Fed. App’x 882, 887 (Fed. Cir. 2019) (citing  
16 *Capital One*, 792 F.3d at 1369); see also *Brit. Telecommunications PLC*, 813 F. App’x at  
17 587 (“We have previously held that tailoring the provision of information to a user’s  
18 characteristics, such as location, is an abstract idea.”) (citing *Capital One*, 792 F.3d at  
19 1369). Thus, and despite Plaintiff’s contentions to the contrary, Claim 1 of the ’116 patent  
20 is drawn to the abstract idea of incentivizing gambling tailored to a user’s location rather  
21 than improving the technical functionality of any prior art tracking system. The Court  
22 accordingly proceeds to *Alice* step two.

#### 23 **b. Alice Step Two**

24 But Claim 1 of the ’116 patent does not set forth an inventive concept that could  
25 render it patent-eligible at *Alice* step two. Plaintiff argues that the asserted patents,  
26 including the ’116 patent, “are directed to technical improvements in online gaming  
27 systems” by “centralizing critical game activities, such as authentication, game outcome  
28 generation, and game resolution.” (ECF No. 47 at 17-18.) Caesars counters that the ’116

1 patent lacks an inventive concept because Claim 1 of the '116 patent does not "disclose  
2 any special way of gaming or incentivizing gaming," nor does it "require any specific,  
3 improved hardware or software configuration." (ECF No. 52 at 6.) The Court agrees with  
4 Caesars.

5 Claim 1 of the '116 patent recites only generic computer hardware performing  
6 routine functions—a wireless device, a verification system, a centralized gaming server,  
7 and a memory module—to allow a user to play an online slot machine game. (ECF No.  
8 1-5 at 10.) And the Federal Circuit has concluded that patent claims that do not "require[]  
9 anything other than off-the-shelf, conventional computer, network, and display technology  
10 for gathering, sending, and presenting the desired information" are unpatentable. *Elec.*  
11 *Power Grp.*, 830 F.3d at 1355. Claim 1 of the '116 patent therefore lacks an inventive step  
12 that could render it patent eligible. Moreover, Claim 1 of the '116 patent does not explain  
13 how it improves any computer hardware or software. (ECF No. 1-5 at 10.) Further, the  
14 claim is written in a style that the Federal Circuit would deem "result-focused" and  
15 therefore unlikely to survive *Alice* scrutiny. *Elec. Power Grp.*, 830 F.3d at 1356. The law  
16 demands more than Claim 1 of the '116 patent offers: a result-oriented solution that  
17 provides "insufficient detail for how a computer accomplishes it." *Capital One*, 850 F.3d  
18 at 1342. The '116 patent therefore does not survive scrutiny at *Alice* step two, and its  
19 accordingly invalid under *Alice* and its progeny.

### 20 C. Leave to Amend

21 Plaintiff requests leave to amend if the Court dismisses any of Plaintiff's claims.  
22 (ECF No. 47 at 23.)<sup>12</sup> The Court has discretion to grant leave to amend and should freely  
23 do so "when justice so requires." Fed. R. Civ. P. 15(a); *see also Allen v. City of Beverly*  
24 *Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Nonetheless, the Court may deny leave to amend  
25 if it will cause: (1) undue delay; (2) undue prejudice to the opposing party; (3) the request  
26 is made in bad faith; (4) the party has repeatedly failed to cure deficiencies; or (5) the  
27 amendment would be futile. *See Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522,

28 <sup>12</sup>This is the request for amendment specific to the *Alice* arguments.

1 532 (9th Cir. 2008). Facts raised for the first time in a plaintiff's opposition papers should  
2 be considered by the Court in determining whether to grant leave to amend or to dismiss  
3 the complaint with or without prejudice. See *Orion Tire Corp. v. Goodyear Tire & Rubber*  
4 *Co.*, 268 F.3d 1133, 1137-38 (9th Cir. 2001).

5 The Court declines to grant Plaintiff leave to amend here because amendment  
6 would be futile. See *Simio*, 983 F.3d at 1364 (affirming the district "court's futility-based  
7 denial" of leave to amend to the plaintiff). As to the parties' *Alice* arguments, Plaintiff only  
8 requests leave to amend to add allegations regarding the inventive steps present in the  
9 asserted patents. (ECF No. 47 at 23.) But Plaintiff does not explain what allegations it  
10 could add that would be both consistent with those in its Complaint and sufficient to show  
11 that the asserted patents contain the inventive steps required to resuscitate the patents  
12 at *Alice* step two. (*Id.* at 23-24.) And the Court cannot foresee any allegations Plaintiff  
13 could add that would solve one of the key issues with the purportedly inventive steps of  
14 the asserted patent claims—that they "merely describe the functions of the abstract idea  
15 itself, without particularity." *Intell. Ventures*, 850 F.3d at 1341. The Court will accordingly  
16 dismiss Plaintiff's Complaint with prejudice, as amendment would be futile.

#### 17 **IV. MOTION FOR SANCTIONS**

18 The Court first describes this case's procedural history to this point, then recites  
19 the legal standard governing its review of Playtika's motion for sanctions, and then  
20 explains its ruling on Playtika's motion.

##### 21 **A. Procedural History**

22 The procedural history of this case is not extensive. Plaintiff filed its Complaint in  
23 October 2020. (ECF No. 1.) Defendants filed their motions to dismiss in February 2021.  
24 (ECF Nos. 26, 28.) The parties have not engaged in any discovery, in pertinent part  
25 because Magistrate Judge Carla L. Baldwin granted Playtika's motion to stay discovery  
26 pending resolution of Defendants' motions to dismiss in April 2021. (ECF No. 50.) Playtika  
27 filed its motion for sanctions in May 2021, seeking its fees and costs incurred in defending  
28 against this case, arguing that Plaintiff failed to conduct an adequate pre-suit investigation

1 before filing suit against Playtika because Plaintiff could have determined Playtika does  
2 not infringe the asserted patents through cursory review of publicly-available materials,  
3 and because one of Plaintiff's arguments presented in opposition to Playtika's motion to  
4 dismiss is baseless. (ECF No. 53.)

## 5 **B. Legal Standard**

6 "The central purpose of Rule 11 is to deter baseless filings." *Newton v. Thomason*,  
7 22 F.3d 1455, 1463 (9th Cir. 1994) (citation omitted). The rule justifies sanctions "when a  
8 filing is frivolous, legally unreasonable, or without factual foundation, or is brought for an  
9 improper purpose." *Estate of Blue v. County of L.A.*, 120 F.3d 982, 985 (9th Cir. 1997)  
10 (citation omitted). Rule 11, however, "is not intended to permit sanctions just because the  
11 court later decides that the lawyer is wrong." *Rachel v. Banana Republic, Inc.*, 831 F.2d  
12 1503, 1508 (9th Cir. 1987) (internal quotation marks and citation omitted). Applying  
13 Second Circuit law, the Federal Circuit has suggested that Rule 11 sanctions for filing a  
14 baseless complaint are only appropriate when the plaintiff's position on patent eligibility  
15 is not even colorable. See *Gust, Inc., v. Alphacap Ventures, LLC*, 905 F.3d 1321, 1328-  
16 29 (Fed. Cir. 2018). "In view of the evolving nature of § 101 jurisprudence during [the  
17 roughly 2015-2017 time period], it is particularly important to allow attorneys the latitude  
18 necessary to challenge and thus solidify the legal rules without the chill of direct economic  
19 sanctions." *Id.* at 1329; see also *id.* at 1325-26 (providing timeline of relevant events).

## 20 **C. Discussion**

21 Playtika essentially asks the Court to sanction Plaintiff for filing this case based on  
22 the strength of two noninfringement arguments raised by Playtika. (ECF No. 35.)<sup>13</sup> But  
23 the Court has not ruled on the merits of Playtika's noninfringement arguments, instead

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24  
25 <sup>13</sup>Plaintiff argues the Court should not even address Playtika's motion for sanctions  
26 on the merits because it violates the stay that Playtika itself obtained. (ECF No. 56 at 5.)  
27 Playtika counters that the Court can—and should—address the motion for sanctions now  
28 because the "stay Playtika requested and that was granted in this case is limited to  
'discovery' and 'deadlines' imposed by Federal and Local Rules." (ECF No. 53 at 4.) The  
Court agrees with Playtika. Playtika only sought a stay of "discovery and all deadlines  
under Fed. R. Civ. P. 26(f), the Local Rules and the Local Patent Rules" (ECF No. 29 at  
1), and Judge Baldwin both granted that motion and only referred to pending discovery in  
her order granting the motion (ECF No. 50 at 2).

1 agreeing with Defendants that this entire case is properly disposed of under *Alice* and its  
2 progeny. Playtika's motion does not address its *Alice* arguments at all.

3 That means Playtika's motion is little help in determining whether Plaintiff's position  
4 on patent eligibility is not even colorable. *See Gust*, 905 F.3d at 1328-29. And the Court  
5 finds it improper to make that determination *sua sponte*. Beyond the fact that Playtika  
6 does not address the factors the Court should consider given that the Court only  
7 addressed the parties' *Alice* arguments, two principles specifically cause the Court to  
8 pause. First, the Ninth Circuit warns that Rule 11 is not intended to permit sanctions just  
9 because the Court determined Plaintiff's lawyers were wrong—in this case, that the  
10 asserted patents are patent eligible. *See Rachel*, 831 F.2d at 1508. Second, the Court  
11 reads *Gust*, 905 F.3d at 1328-29, to contain a note of caution from the Federal Circuit  
12 regarding awarding Rule 11 sanctions where, as here, the Court makes an *Alice* ruling  
13 early on in a case. The Court will therefore deny Playtika's motion for sanctions.

#### 14 **V. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several  
16 cases not discussed above. The Court has reviewed these arguments and cases and  
17 determines that they do not warrant discussion as they do not affect the outcome of the  
18 motions before the Court.

19 It is therefore ordered that Defendant Caesars Interactive Entertainment's motion  
20 to dismiss (ECF No. 26) is granted.

21 It is further ordered that Defendants Playtika Holding Corp. and Playtika Ltd.'s  
22 motion to dismiss (ECF No. 28) is granted.

23 It is further ordered that Defendants Playtika Holding Corp. and Playtika Ltd.'s  
24 motion for Rule 11 sanctions (ECF No. 53) is denied.

25 It is further ordered that Plaintiff's Complaint (ECF No. 1) is dismissed, in its  
26 entirety, with prejudice, as amendment would be futile.

27 It is further ordered that U.S. Patent Nos. 8,747,229, 8,506,406, 9,646,454,  
28 8,506,407, and 9,373,116 are invalid as further explained herein.

1           The Clerk of Court is directed to enter judgment accordingly—in Defendants'  
2 favor—and close this case.

3           DATED THIS 7<sup>th</sup> Day of July 2021.

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A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE